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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:10679 of 2005

DATED:04-04-2006

Between:

Vegi Uma Pathi

..... PETITIONER

AND

1. The Inspector General/SWS, Central Industrial Security Force (Ministry of Home Affairs), RCFL Complex, Chembur, Mumbai – 400 074 and 2 others.

.....RESPONDENTS

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ORDER:

The petitioner herein assails the proceedings of the third respondent dated 05-02-2000, as confirmed by the first respondent in proceedings dated 31-03-2001, as arbitrary and illegal.

For unauthorized absence, the petitioner was issued a charge sheet and on an enquiry being conducted the petitioner was found guilty of the charges. A copy of the enquiry report was served on him on 12-01-2000 calling upon him to submit his explanation within

15 days and accordingly the petitioner submitted his explanation on 28-01-2000. Thereafter the disciplinary authority, by order dated 09-02-2000, imposed the punishment of reduction by one stage for a period of two years with effect from 01-03-2000 and held that after expiry of this period the reduction will not have the effect of postponing the future increments of pay. Aggrieved thereby, the petitioner preferred an appeal to the second respondent and his appeal was rejected by proceedings dated 16-08-2000 enhancing the punishment from one without cumulative effect to one with cumulative effect i.e., during the period of reduction the petitioner was held not entitled to earn increments of pay and that the reduction would have the effect of postponing his future increments of pay. Aggrieved thereby, the petitioner is said to have preferred a revision and the revision petition was rejected vide proceedings dated 31-03-2001.

The sole contention of Sri K.Ananda Rao, learned counsel for the petitioner, is that the petitioner has not been given an opportunity to show cause against the proposed punishment and on receipt of his representation, to the enquiry report, the disciplinary authority straight away imposed the punishment. Learned counsel would place reliance on **Kottapati Jayachandra Reddy v. Depot Manager, APSRTC**[1], wherein this Court held thus:

"……The first respondent followed a

peculiar procedure, in the disciplinary proceedings initiated, against the petitioner. An enquiry was conducted and on the basis of the report submitted by the enquiry officer, the 1st respondent has, straight away, inflicted the punishment of stoppage of annual increment, for two years, with cumulative effect. However, he has chosen to issue a show cause notice, in relation to the period of suspension. On considering the explanation submitted by the petitioner, the 1st respondent treated the period of suspension, as not on duty. The appeal and review filed by the petitioner were rejected. Therefore, it clearly emerges that the punishment of stoppage of increment, with cumulative effect, was inflicted on the petitioner, without issuing any show cause notice, after the departmental enquiry was conducted. When the 1st respondent himself recognized the necessity to issue a show cause notice, as to how the period of suspension must be treated, as not on duty, he ought to have followed the same procedure, before inflicting the punishment of stoppage of increment, that too, with cumulative effect.

Strictly speaking, the impugned order deserves to beset aside, and the matter needs to be remanded. However, having regard to the fact that nearly six years have elapsed, this Court does not find it proper, to subject the petitioner to another set of proceedings. Taking the totality of the circumstances, into account, the punishment of stoppage of increment shall be treated, as the one without cumulative effect. However, the petitioner shall not be entitled for any monetary benefit, up to the date of this order, on account of the modification of the punishment……"

All that this Court held is that on receipt of the report of the enquiry officer, the disciplinary authority could not have straight away inflicted the punishment of stoppage of annual increments for

two years without cumulative effect. The said judgment nowhere requires the disciplinary authority to issue a show cause notice with regards the proposed penalty. In this context, reference may usefully be made to the judgment of the Supreme Court in **Associated Cement Companies Ltd., v. T.C. Shrivastava**[2], wherein the Supreme Court held that neither under the ordinary law of the land nor under industrial law was a second opportunity to show cause against the proposed punishment necessary and unless the statutory rules/standing orders provide for it, either explicitly or by necessary implementation, no enquiry which was otherwise fair and valid would be vitiated by non-affording of such a second opportunity. No such rule, which requires a delinquent employee to be permitted to show cause against the proposed punishment, has been brought to the notice of this Court. This contention is therefore liable to be rejected.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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04th April, 2006

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[1] 2005 (6) ALD 247

[2] AIR 1984 SC 1227